

SERVED: August 29, 1994

NTSB Order No. EA-4233

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of August, 1994

_____)	
Petition of)	
)	
JOHN FREDERICK PARKER,)	
)	
for review of the denial by)	Docket SM-4121
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
_____)	

OPINION AND ORDER

Petitioner has appealed from an order issued by Administrative Law Judge William A. Pope, II, on May 9, 1994. In that order, the law judge granted the Administrator's motion to dismiss petitioner's petition for review of the denial of his application for a second-class airman medical certificate on the grounds that the petition was barred by the doctrine of res judicata.¹ For the reasons discussed below, petitioner's appeal is denied and the law judge's order is affirmed.

¹ A copy of the law judge's order is attached.

In the final denial of petitioner's application for airman medical certification, the Federal Air Surgeon concluded that petitioner was disqualified under 14 C.F.R. sections 67.13, .15, and .17(d)(1)(i)(b),² based on his "established medical history and clinical diagnosis of psychosis."³ The Administrator filed a motion to dismiss the petition for review of this denial under the doctrine of res judicata, citing our decision in Petition of Parker, 5 NTSB 1845 (1987) (hereinafter "the 1987 case"), where we affirmed the FAA's denial of a prior application for medical certification filed by this petitioner. Our affirmance of the denial in the 1987 case was based in part on a finding, made after a full evidentiary hearing, that petitioner had a medical

² **§ 67.15 Second-class medial certificate.**

(a) To be eligible for a second-class medical certificate, an applicant must meet the requirements of paragraphs (b) through (f) of this section.

* * *

(d) *Mental and neurologic* -- (1) *Mental*.

(i) No established medical history or clinical diagnosis of any of the following:

* * *

(b) *A psychosis*.

The Federal Air Surgeon's denial cited similar paragraphs of sections 67.13 and 67.17, which set forth the medical standards for first- and third-class certification.

³ A copy of the final denial, dated February 28, 1994, is attached to petitioner's appeal brief. Petitioner's petition for review referenced an earlier denial (dated January 14, 1994) issued by the FAA's Aeromedical Certification Division, which cited paragraph (d)(1)(ii) of sections 67.13, .15, and .17 as the basis for the denial. However, because both parties subsequently adopted the position that petitioner's petition for review relates to the Federal Air Surgeon's final denial, we have treated the case as such.

history and clinical diagnosis of psychosis. The law judge granted the Administrator's motion to dismiss, holding that since the existence of a specifically disqualifying condition (psychosis) had been previously established in litigation before the Board, petitioner was barred from relitigating the issue.

On appeal, petitioner argues that res judicata was improperly applied in this case, because that doctrine presumes that the adjudicating body will consistently apply its policy. In petitioner's view, our affirmance of the FAA's denial in the 1987 case, which was based on psychiatric evidence and testimony introduced in that case, was inconsistent with our handling of an earlier case also involving the issue of whether petitioner had a history or clinical diagnosis of psychosis -- Petition of Parker, 4 NTSB 541 (1982) (hereinafter "the 1982 case") -- where we upheld the law judge's reversal of the FAA's denial of medical certification because the record in that case lacked sufficient supporting medical evidence.⁴

Specifically, petitioner claims that he was unfairly prejudiced in the 1987 case (where he presented no medical evidence to rebut the FAA's evidence and expert testimony) because he was unprepared for the law judge's and the Board's

⁴ The different outcomes of the 1982 case and the 1987 case indicate no inconsistency in policy, but rather reflect the fact that they were based on differing evidentiary records. As noted by the law judge in the present case, "[a] comparison of the 1982 and 1987 Board decisions . . . reveals that . . . there developed in the intervening five years a sufficient body of clinical data to convince the Board that a medical history or clinical diagnosis of a psychosis had since become manifest." (Order Granting Motion To Dismiss, at 4.)

departure from what he believed to be the Board's prior "repudiation [in the 1982 case], without limitation, of all psychiatric opinion as vague and mystifying" and thus worthless.

(App. Br. at 2-3.) This repudiation was allegedly contained in the law judge's initial decision in that case, which petitioner asserts constituted "definitively stated Board policy that psychiatric experts were not be believed," upon which he was entitled to rely. (App. Br. at 3.)⁵ Because of this asserted inconsistent application of policy, and alleged insufficient specificity in the FAA's denial the 1987 case, petitioner asserts that he is entitled to a hearing on the merits of the FAA's denial of his most recent application.

Petitioner's argument is premised on an incorrect and unreasonable interpretation of our decision in the 1982 case. Despite the law judge's gratuitous comments in that case, the full Board's opinion in no way suggests that psychiatric opinion is to be disregarded as worthless. To the contrary, our decision

⁵ The law judge's comments in the 1982 case were as follows:

I have said this before, but I think it bears repeating: The record herein has tended to strengthen my suspicion that perhaps no other branch of medicine mystifies the public and breeds such a host of vague diagnostic terms as does psychiatry. This case points up the need to heed the admonition found in the last paragraph of Norman Cousins' book, entitled "Anatomy of an Illness": "It all began, I said, when I decided that some experts don't really know enough to make a pronouncement of doom on a human being. And I said I hoped they would be careful about what they said to others; they might be believed and that could be the beginning of the end."

in the 1982 case (concluding that the record did not support a diagnosis of psychosis) acknowledges the importance of such expert opinion testimony, in that it was based in large part on the fact that none of the psychiatric or psychological testimony in that case could be viewed as clearly supporting the proffered diagnosis. We reject petitioner's position that the 1982 case could reasonably lead him to believe that we would henceforth give no weight to psychiatric opinion testimony.

Further, we reject petitioner's apparent attempt to challenge the result in the 1987 case. The time for appealing, or seeking reconsideration of, that decision has long since passed. It is well-established that the doctrine of res judicata bars relitigation of issues concerning specifically disqualifying medical conditions (such as the one here at issue) that have been adjudicated in a prior case, and that motions to dismiss are properly granted when such a prior adjudication exists.⁶ Petitioner has shown no error in the law judge's dismissal of his petition for review.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied; and
2. The law judge's order dismissing petitioner's petition for review is affirmed.

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁶ Petition of Weiss, NTSB Order No. EA-3678 (1992); Petition of Layfield, 6 NTSB 218 (1988); Petition of Fore, 4 NTSB 1202 (1984); Petition of Schevchuk, 4 NTSB 4 (1982).